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SUBJECT: ECUADOR'S FRAGILE SUPREME COURT FIGHTS SCANDAL

Classified By: PolOff Erik Martini for reasons 1.4 (B&D)

¶1. (U) Summary: Former congressman Renan Borbua turned his messy political trial into a corruption scandal directed at Supreme Court Justice Alfonso Zambrano when he presented video evidence of the Justice's son asking for a bribe. After over a week of public uproar and press, the Supreme Court took matters into its own hands and unanimously removed all three justices of Zambrano's chamber, not waiting for an investigatory report it had ordered a week ago. The Supreme Court had made some headway as a legitimate institution in past months, striving for de-politicization, clearing cases, and taking on some high profile corruption cases. While the current scandal seriously threatens the still fragile Court, its strong action today may avert a crisis in the Ecuadorian legal system. End Summary.

Messy Political Trial Explodes and Court Polices Itself

¶2. (SBU) Former Patriotic Society (PSP) congressional deputy and cousin of ex-president Lucio Gutierrez Renan Borbua on September 6 shocked the Supreme Court when he announced he had videotaped the son of Supreme Court Justice Alfonso Zambrano Pasquel asking for a \$500,000 bribe to set aside a lower court ruling against him. Immediately following the charge, the son, Alfonso Zambrano Vidal, reportedly fled Ecuador for Peru (and has been placed on a watchlist should he seek to enter the United States). Meanwhile, Justice Zambrano Pasquel, who is traveling in Bolivia visiting a law school, resigned his post this morning (and has also been placed on a watchlist should he seek to enter the United States). This afternoon, the Supreme Court unanimously decided to remove Zambrano and the other two Justices in his chamber permanently. The Supreme Court had ordered an investigation into the matter, convoking an investigatory committee charged with gathering evidence and examining the authenticity of the videotape. The investigatory committee's report is not finished and not due until next week.

Background: Underlying Political Trial in Guayaquil

¶3. (C) A Guayaquil lower criminal court convicted Borbua of "prevaricato" (perversion of justice) when he called ex-presidential candidate and Social Christian Party (PSC) stalwart Xavier Neira a "thieving dog". The PSC is believed to control the Guayaquil courts. Borbua appealed the sentence of two years in prison and five million dollars in damages. He claimed immunity as a congressional deputy and that the newspaper publishing the defamatory remark hadn't certified the quote as required by Ecuadorian law. Arturo Donoso, former member of the Supreme Court and current legal

adviser to Jaime Velasco, speculates Borbua may be stalling for time with his corruption accusation because if the appeal isn't resolved by November 7th, the case will be barred by prescription.

Improving Supreme Court and Judicial System Hit Hard

¶4. (SBU) The scandal comes as the Supreme Court is struggling to gain legitimacy as a democratic institution. Before the Gutierrez administration, seats on the Court were allocated by Congress according to political party. Gutierrez and his allies attempted unconstitutionally to pack the Supreme Court in December, 2004, to get around the resulting PSC domination. Protests against his Supreme Court meddling, including his last ditch attempt to dissolve it unconstitutionally, led to the downfall of the government. In November, 2005, a new Court was named using a process that, while extra-constitutional, resulted in a largely de-politicized and well-regarded court thanks to active OAS oversight.

¶5. (U) Since November, the Court has been working hard to gain the trust of the Ecuadorian people. Its president, Jaime Velasco, embarked on a publicity campaign, giving a nationally televised speech highlighting his justices' hard work to clear the backlog of cases accumulated after almost a year of the Court's absence. Velasco ordered the previous Supreme Court President, Guillermo Castro, to stand trial for corruption charges. He also recently announced he will open all his bank accounts to the public.

¶6. (SBU) In spite of the positive direction of the new Supreme Court, it continues to be weighed down by a generally corrupt justice system that is regularly pilloried in the press. In addition to the current scandal, the Court has drawn public ire for dismissing the corruption case against despised former president Jamil Mahuad -- albeit that may well have been the correct legal decision. The Zambrano scandal has provoked demonstrations and protests in front of the Supreme Court building.

Insiders Worry

¶7. (C) Donoso told PolOff yesterday the situation with the Court was precarious and in the hands of public opinion. Defending Zambrano had already become close to impossible given the media perception, he said. Velasco is close to "throwing in the towel" and resigning. He claimed Leon Roldos would be the only President capable of preventing the Court's downfall. He vaguely alluded to lingering interference in the Court by the PSC.

Comment

¶8. (C) Ecuador has made some progress in legitimizing, de-politicizing and strengthening the Supreme Court. This scandal threatened to be a major setback. President Palacio has, for the moment, distanced himself from the scandal, perhaps preferring to leave the mess for the next administration. Under immense pressure, Velasco had been criticized for merely opening an investigation and suspending the justices for 15 days rather than taking stronger action in view of the video evidence. Today's action by the Supreme Court removing Zambrano on its own unanimous initiative sends the signal that it may be serious about fighting corruption. It will definitely help quell the public outcry that seriously threatened the institution.

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